

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

AT RICHMOND, JUNE 25, 2010

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JOINT PETITION OF

ALLEGHENY ENERGY, INC.;
FIRSTENERGY CORP.;
TRANS-ALLEGHENY INTERSTATE LINE
COMPANY;

and

CASE NO. PUE-2010-00056

THE POTOMAC EDISON COMPANY
D/B/A ALLEGHENY POWER

For approval of the acquisition of control of
The Potomac Edison Company d/b/a Allegheny
Power and Trans-Allegheny Interstate Line
Company by FirstEnergy Corp., pursuant to
the Utility Transfers Act

ORDER FOR NOTICE AND COMMENT

On June 4, 2010, pursuant to Chapter 5 of Title 56 of the Code of Virginia ("Code"),¹ Allegheny Energy, Inc. ("Allegheny Energy"); FirstEnergy Corp. ("FirstEnergy"); Trans-Allegheny Interstate Line Company ("TrAILCo"); and The Potomac Edison Company d/b/a Allegheny Power ("Potomac Edison") (collectively, "Petitioners" or "Joint Petitioners"), filed a Motion for Protective Ruling, and on June 14, 2010, the Petitioners completed the filing of a Joint Petition seeking approval of the transfer of control of Potomac Edison and TrAILCo to FirstEnergy.²

¹ Va. Code §§ 56-88 *et seq.*

² The Joint Petition was filed with the Clerk of the State Corporation Commission ("Commission") on June 4, 2010, but not deemed complete until June 14, 2010, when the signature verification of FirstEnergy's Secretary was received. PATH Allegheny Virginia Transmission Corporation ("PATH-VA") is another wholly owned subsidiary of Allegheny Energy organized as a public service company in Virginia. However, because PATH-VA does not currently own or operate facilities in Virginia, the Joint Petitioners have claimed that it is not a public utility as defined in § 56-88 of the Code, and, therefore, the Petitioners did not include it as a party to this case. *See* Joint Petition at 2, fn. 3.

On June 4, 2010, Allegheny Energy, the parent company of Potomac Edison and TrAILCo, and FirstEnergy entered into an Agreement and Plan of Merger ("Agreement").³ Under the terms of the Agreement, Allegheny Energy and FirstEnergy would combine, after which Allegheny Energy would become a wholly owned, first tier subsidiary of FirstEnergy (hereinafter, "proposed transaction" or "proposed merger").⁴ Thus, if the proposed merger is completed, FirstEnergy would become the ultimate corporate parent of Allegheny Energy and all of its subsidiaries.⁵

Since completion of the proposed merger would result in FirstEnergy acquiring control of Allegheny Energy's subsidiaries, including Potomac Edison and TrAILCo, the Petitioners have filed this Joint Petition with the Commission seeking approval of the transfer of control of Potomac Edison and TrAILCo to FirstEnergy.⁶

In the Joint Petition, the Petitioners also state that, although a final decision has not been made, they may elect to transition to a corporate structure whereby Allegheny Energy's three direct public utility subsidiaries that conduct business as Allegheny Power would also all be aligned as first tier subsidiaries of FirstEnergy.⁷ To avoid the time and expense of a separate filing before the Commission if the Petitioners did decide to transition to such a corporate

³ *Id.* at 1.

⁴ *Id.* at 1, 5. Specifically, to effectuate the proposed transaction, Allegheny Energy and Element Merger Sub., Inc., will merge, after which Allegheny Energy will be the surviving entity, and the separate corporate existence of Element Merger Sub., Inc., will cease. Element Merger Sub., Inc., is a wholly owned subsidiary of FirstEnergy, which was formed for the sole purpose of effecting the proposed merger. *See Id.* at 2, 5.

⁵ *Id.* at 6.

⁶ *Id.* at 1-2.

⁷ Allegheny Energy has three direct public utility subsidiaries that conduct business as Allegheny Power: West Penn Power Company, in Pennsylvania; Monongahela Power Company, in West Virginia; and Potomac Edison, in Maryland, West Virginia, and Virginia. *Id.* at 5.

structure, the Joint Petitioners have requested that the Commission also approve this alternative corporate structure.⁸

According to the Petitioners, the proposed transaction would not impair or jeopardize Potomac Edison's provision of adequate service to the public at just and reasonable rates. Nor would the proposed transaction impair or jeopardize TrAILCo's provision of adequate service to the public at just and reasonable rates.⁹ Upon consummation of the proposed transaction, the Petitioners state that Potomac Edison and TrAILCo would continue to operate as Virginia electric transmission public utilities subject to the continuing jurisdiction of the Commission, without any reduction in the Commission's existing authority.¹⁰ Moreover, the Joint Petitioners state that they will not seek to include costs related to the proposed merger in their filed transmission revenue requirements for a period of five years from the effective date of the proposed merger, unless they can demonstrate savings equal to, or in excess of, the costs related to the proposed merger.¹¹

NOW THE COMMISSION, upon consideration of the Joint Petition, is of the opinion and finds that the Joint Petition should be docketed; that the Petitioners should give notice to the public of their Joint Petition; that interested persons should have an opportunity to comment and request a hearing on the Joint Petition; and that the Commission Staff ("Staff") should conduct an investigation into the reasonableness of the Joint Petition and present its findings in a Staff Report.

⁸ *Id.* at 6.

⁹ *Id.* at 2.

¹⁰ *Id.* at 6-7.

¹¹ *Id.* at 2.

The Joint Petitioners are seeking approval of a transfer of control pursuant to § 56-88.1 of the Code. Section 56-88.1 of the Code states that the Commission must "approve or disapprove the requested acquisition or disposition within sixty days. The sixty-day period may be extended by Commission order for a period not to exceed an additional 120 days." Given the complexity of this Joint Petition, the Commission finds that its review period to approve or disapprove the Joint Petition should be extended for an additional thirty (30) days. The Commission expects to rule on the Joint Petition expeditiously but finds that additional time is necessary to review the transaction, to provide the appropriate notice, and to afford interested persons an opportunity to file comments or request a hearing.

Accordingly, IT IS ORDERED THAT:

- (1) This case is docketed and assigned Case No. PUE-2010-00056.
- (2) The review period for this docket shall be extended for an additional thirty (30) days, pursuant to § 56-88.1 of the Code.
- (3) As provided by § 12.1-31 of the Code and by 5 VAC 5-20-120 of the Commission's Rules of Practice and Procedure, a hearing examiner shall be appointed to rule on the Joint Petitioner's June 4, 2010 Motion for Protective Ruling, and on any discovery matters that may arise during the course of this proceeding.
- (4) Copies of the Joint Petition may be obtained by submitting a written request to counsel for the Joint Petitioners: Richard D. Gary, Esquire, Hunton & Williams LLP, Riverfront Plaza-East Tower, 951 East Byrd Street, Richmond, Virginia 23219. The Petitioners shall respond promptly to requests from interested persons for copies of the Joint Petition and shall provide one (1) copy free of charge. If acceptable to the requesting party, the Joint Petitioners may provide the Joint Petition by electronic means. Copies of the Joint Petition, as well as a

copy of this Order for Notice and Comment, shall also be available for interested persons to review in the Commission's Document Control Center, located on the First Floor of the Tyler Building, 1300 East Main Street, Richmond, Virginia, between the hours of 8:15 a.m. and 5:00 p.m., Monday through Friday. Interested persons may also download unofficial copies from the Commission's website: <http://www.scc.virginia.gov/case>.

(5) On or before July 9, 2010, the Joint Petitioners shall complete publication of the following notice to be published on one (1) occasion as display advertising, not classified, in newspapers having general circulation throughout Potomac Edison's former retail service territory:

NOTICE TO THE PUBLIC OF A JOINT PETITION BY
ALLEGHENY ENERGY, INC.; FIRSTENERGY CORP.;
TRANS-ALLEGHENY INTERSTATE LINE COMPANY; AND
THE POTOMAC EDISON COMPANY D/B/A
ALLEGHENY POWER; FOR APPROVAL OF THE
ACQUISITION OF CONTROL OF THE POTOMAC EDISON
COMPANY D/B/A ALLEGHENY POWER AND TRANS-
ALLEGHENY INTERSTATE LINE COMPANY BY
FIRSTENERGY CORP. PURSUANT TO THE UTILITY
TRANSFERS ACT
CASE NO. PUE-2010-00056

On June 14, 2010, pursuant to Chapter 5 of Title 56 of the Code of Virginia ("Code"), Allegheny Energy, Inc. ("Allegheny Energy"); FirstEnergy Corp. ("FirstEnergy"); Trans-Allegheny Interstate Line Company ("TrAILCo"); and The Potomac Edison Company d/b/a Allegheny Power ("Potomac Edison") (collectively, "Petitioners" or "Joint Petitioners"), completed the filing of a Joint Petition seeking approval of the transfer of control of Potomac Edison and TrAILCo to FirstEnergy.

On June 4, 2010, Allegheny Energy, the parent company of Potomac Edison and TrAILCo, and FirstEnergy entered into an Agreement and Plan of Merger ("Agreement"). Under the terms of the Agreement, Allegheny Energy and FirstEnergy would combine, after which Allegheny Energy would become a wholly owned, first tier subsidiary of FirstEnergy (hereinafter, "proposed transaction" or "proposed merger"). If the proposed merger is

completed, FirstEnergy would become the ultimate corporate parent of Allegheny Energy and all of its subsidiaries.

Since completion of the proposed merger would result in FirstEnergy acquiring control of Allegheny Energy's subsidiaries, including Potomac Edison and TrAILCo, the Petitioners have filed this Joint Petition with the State Corporation Commission ("Commission") seeking approval of the transfer of control of Potomac Edison and TrAILCo to FirstEnergy.

In the Joint Petition, the Petitioners also state that, although a final decision has not been made, they may elect to transition to a corporate structure whereby Allegheny Energy's three direct public utility subsidiaries that conduct business as Allegheny Power would also all be aligned as first tier subsidiaries of FirstEnergy. To avoid the time and expense of a separate filing before the Commission if the Petitioners did decide to transition to such a corporate structure, the Joint Petitioners have requested that the Commission also approve this alternative corporate structure.

According to the Petitioners, the proposed transaction would not impair or jeopardize Potomac Edison's provision of adequate service to the public at just and reasonable rates. Nor would the proposed transaction impair or jeopardize TrAILCo's provision of adequate service to the public at just and reasonable rates. Upon consummation of the proposed transaction, the Petitioners state that Potomac Edison and TrAILCo would continue to operate as Virginia electric transmission public utilities. Moreover, the Joint Petitioners state that they will not seek to include costs related to the proposed merger in their filed transmission revenue requirements for a period of five years from the effective date of the proposed merger, unless they can demonstrate savings equal to, or in excess of, the costs related to the proposed merger.

Copies of the Joint Petition may be obtained by submitting a written request to counsel for the Joint Petitioners: Richard D. Gary, Esquire, Hunton & Williams LLP, Riverfront Plaza-East Tower, 951 East Byrd Street, Richmond, Virginia 23219. The Petitioners shall respond promptly to requests from interested persons for copies of the Joint Petition and shall provide one copy free of charge. If acceptable to the requesting party, the Joint Petitioners may provide the Joint Petition by electronic means. Copies of the Joint Petition, as well as a copy of the Commission's Order for Notice and Comment, also shall be available for interested persons to review in the Commission's Document

Control Center, located on the First Floor of the Tyler Building, 1300 East Main Street, Richmond, Virginia, between the hours of 8:15 a.m. and 5:00 p.m., Monday through Friday. Interested persons may also download unofficial copies from the Commission's website: <http://www.scc.virginia.gov/case>.

On or before July 30, 2010, any interested person may file written comments on the Joint Petition with Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118. Diskettes, compact disks, or any other form of electronic storage medium may not be filed with written comments. Interested persons desiring to submit comments electronically may do so on or before July 30, 2010, by following the instructions found on the Commission's website: <http://www.scc.virginia.gov/case>. All comments shall refer to Case No. PUE-2010-00056.

On or before July 30, 2010, any interested party may participate as a respondent by filing an original and fifteen (15) copies of a notice of participation with the Clerk of the Commission at the address set forth above, and by simultaneously serving a copy of the notice of participation upon counsel for the Joint Petitioners: Richard D. Gary, Esquire, Hunton & Williams LLP, Riverfront Plaza-East Tower, 951 East Byrd Street, Richmond, Virginia 23219. In the alternative, the notice may be filed electronically with the Clerk of the Commission as provided by 5 VAC 5-20-140 of the State Corporation Commission's Rules of Practice and Procedure ("Rules of Practice"). Pursuant to 5 VAC 5-20-80 B of the Rules of Practice, any notice of participation shall set forth: (i) a precise statement of the interest of the respondent; (ii) a statement of the specific action sought to the extent then known; and (iii) the factual and legal basis for the action. Any organization, corporation, or government body participating as a respondent must be represented by counsel as required by Rule 5 VAC 5-20-30 of the Rules of Practice. All correspondence shall refer to Case No. PUE-2010-00056.

On or before July 30, 2010, any person wishing to request a hearing on this Joint Petition shall file an original and fifteen (15) copies of its request for hearing in writing with the Clerk of the Commission at the address set forth above. Written requests for hearing shall refer to Case No. PUE-2010-00056 and shall include: (i) a precise statement of the interest of the filing party; (ii) a statement of the specific action sought to the extent then known; (iii) a statement of the legal basis for such action; and (iv) a precise statement why a hearing should be conducted in the matter. A

copy shall also simultaneously be served on counsel for the Joint Petitioners at the address listed above.

ALLEGHENY ENERGY, INC.; FIRSTENERGY CORP.; TRANS-ALLEGHENY INTERSTATE LINE COMPANY; AND THE POTOMAC EDISON COMPANY D/B/A ALLEGHENY POWER

(6) On or before July 9, 2010, the Joint Petitioners shall serve a copy of this Order for Notice and Comment on the chairman of the board of supervisors and county attorney of each county and upon the mayor or manager (or upon equivalent official) of every city and town in which Potomac Edison formerly provided retail service in the Commonwealth of Virginia. Service shall be made by first class mail to the customary place of business or residence of the person served.

(7) On or before July 30, 2010, the Petitioners shall file with the Clerk of the Commission proof of notice and proof of service as ordered in Ordering Paragraphs (5) and (6) herein.

(8) On or before July 30, 2010, any interested person may file written comments on the Joint Petition with Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118. Diskettes, compact disks, or any other form of electronic storage medium may not be filed with written comments. Interested persons desiring to submit comments electronically may do so on or before July 30, 2010, by following the instructions found on the Commission's website: <http://www.scc.virginia.gov/case>. All comments shall refer to Case No. PUE-2010-00056.

(9) On or before July 30, 2010, any interested party may participate as a respondent in this proceeding by filing an original and fifteen (15) copies of a notice of participation with Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118, and by simultaneously serving a copy of the notice

of participation upon counsel for the Joint Petitioners: Richard D. Gary, Esquire, Hunton & Williams LLP, Riverfront Plaza-East Tower, 951 East Byrd Street, Richmond, Virginia 23219. In the alternative, the notice may be filed electronically with the Clerk of the Commission as provided by 5 VAC 5-20-140 of the Commission's Rules of Practice and Procedure ("Rules of Practice"). Pursuant to 5 VAC 5-20-80 B of the Rules of Practice, any notice of participation shall set forth: (i) a precise statement of the interest of the respondent; (ii) a statement of the specific action sought to the extent then known; and (iii) the factual and legal basis for the action. The notice of participation shall be filed and served as required by Rules 5 VAC 5-20-140 and 5 VAC 5-20-150 of the Rules of Practice. Any organization, corporation, or government body participating as a respondent must be represented by counsel as required by Rule 5 VAC 5-20-30 of the Rules of Practice. All correspondence shall refer to Case No. PUE-2010-00056.

(10) On or before July 30, 2010, any person wishing to request a hearing on this Joint Petition shall file an original and fifteen (15) copies of its request for hearing in writing with Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118. Written requests for hearing shall refer to Case No. PUE-2010-00056 and shall include: (i) a precise statement of the interest of the filing party; (ii) a statement of the specific action sought to the extent then known; (iii) a statement of the legal basis for such action; and (iv) a precise statement why a hearing should be conducted in the matter. A copy shall also simultaneously be served on counsel for the Joint Petitioners: Richard D. Gary, Esquire, Hunton & Williams LLP, Riverfront Plaza-East Tower, 951 East Byrd Street, Richmond, Virginia 23219.

(11) The Commission Staff shall analyze the reasonableness of the Joint Petition and present its findings in a Staff Report to be filed on or before August 13, 2010.

(12) On or before August 20, 2010, the Petitioners shall file with the Clerk of the Commission an original and fifteen (15) copies of any responses to the Staff Report or to comments or requests for hearing filed with the Commission. A copy of the response shall be delivered by overnight delivery to Staff and any other persons who filed comments, notices of participation, or requests for hearing.

(13) The Joint Petitioners shall respond to written interrogatories or data requests within three (3) days after the receipt of the same. Persons who filed requests for hearing shall, promptly upon request, provide to the Petitioners, the Commission Staff, and any other persons who filed requests for hearing any workpapers or documents used in preparation of their requests for hearing. Except as so modified, discovery shall be in accordance with Part IV of the Commission's Rules of Practice and Procedure.

(14) This matter is continued generally.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to:
Richard D. Gary, Esquire, and Charlotte P. McAfee, Esquire, Hunton & Williams LLP,
Riverfront Plaza-East Tower, 951 East Byrd Street, Richmond, Virginia 23219; C. Meade
Browder, Jr., Senior Assistant Attorney General, Division of Consumer Counsel, Office of
Attorney General, 900 East Main Street, 2nd Floor, Richmond, Virginia 23219; and a copy shall
be delivered to the Commission's Office of General Counsel and Divisions of Energy
Regulation, Public Utility Accounting, and Economics and Finance.